

**Michelle T. Friend
Benjamin O. Rechtfertig
HEDGER FRIEND, PLLC
2800 Central Avenue, Suite C
Billings, Montana 59102
(406) 896-4100
(406) 896-4199 - facsimile
mfriend@hedgerlaw.com
brechtfertig@hedgerlaw.com**

Attorney for Respondent

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

TERRY ROD,) Cause No. CV -
)
Petitioner,)
) PETITION AND NOTICE OF
vs.) REMOVAL
)
BNSF RAILWAY COMPANY, a)
Delaware Corporation,)
)
Respondent.)
_____)

**TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA, BILLINGS DIVISION**

Please take notice that Respondent¹ BNSF Railway Company hereby removes to this Court the state court action described below under 28 U.S.C. §§ 1332, 1441, and 1446 on the grounds of diversity jurisdiction.

1. This is a Notice of Removal Based on Diversity of Citizenship for an Action Pending in the District Court of the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone.

BNSF is the named respondent in a civil action filed in the District Court of the Thirteenth Judicial District in and for Yellowstone County, styled *Terry Rod v. BNSF Railway Company*, Cause No. DV-21-0667 (the “State Court Action”). A copy of the Petition for Attorneys’ Fees and Costs (the “Petition”) served on BNSF is attached hereto as **Exhibit “A”**.

2. BNSF First Received the Petition on July 7, 2021.

BNSF received Petitioner’s Petition by email on July 7, 2021. *See* Certificate of Service, attached hereto as **Exhibit “B”**. Removal is thus timely under 28 U.S.C. § 1446(b) as less than 30 days have passed since BNSF received the Petition.

3. The State Court Action Concerns an Amount in Controversy in Excess of \$75,000 and Involves a Petitioner and Respondent of Diverse Citizenship.

The State Court Action is a civil action over which this Court has jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by BNSF

¹ While BNSF is the “petitioner” for the instant Petition and Notice of Removal, for the purposes of this pleading BNSF will refer to the “petitioner” and “respondent” of the matter being removed – Rod and BNSF, respectively.

pursuant to 28 U.S.C. §§ 1332 and 1441 because it is a civil action between citizens/entities of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

A. Petitioner Seeks Damages Exceeding \$75,000.

Petitioner seeks recovery of attorneys' fees and costs pursuant to Mont. Code Ann. § 49-2-505(8). Petition, 1:19-20; 3:3-6. He further request "a multiplier or enhancement of his attorneys' fees and costs." *Id.*, 3:15-18. According to Petitioner's attorneys' declarations in support of the Petition, they claim to have expended a total of \$538,628 in attorney fees and \$20,947.70 in expenses. *See* Dec. Jon Mark Moyers Supt. Pet. Attys.' Fees & Costs, ¶¶ 4, 5² (July 7, 2021) (attached hereto as **Exhibit "C"**); Dec. Kathryn Kohn Troidahl Supt. Pet. Attys.' Fees & Costs, ¶¶ 17, 18 (July 7, 2021) (attached hereto as **Exhibit "D"**). Thus, this case meets the amount in controversy requirement of 28 U.S.C. § 1332(a).

B. Petitioner is a Citizen of Montana, Whereas Respondent is Not.

BNSF is informed and believes that Petitioner is a citizen and resident of Montana. *See* Dec. Michelle T. Friend, ¶ 3 (July 28, 2021) (attached hereto as **Exhibit "E"**). At the time of the filing of the Petition and currently, Respondent BNSF is a Delaware corporation with its principal place of business in Texas and is,

² The referenced paragraphs, which appear on page 7 of the Declaration, are misnumbered "4" and "5." They are, in fact, the twenty-first and twenty-second paragraphs of the Declaration.

therefore, a citizen of Delaware and Texas, but not Montana. *See* Dec. James Obermiller, ¶¶ 4-14 (Apr. 30, 2018) (attached hereto as **Exhibit “F”**); Dec. Friend, ¶ 4.

Because Respondent is not a citizen of Montana, where this action was filed, complete diversity of citizenship exists and the diversity requirements for removal are met under 28 U.S.C. §§ 1332 and 1441.

4. BNSF will Notify the State Court of this Removal.

Pursuant to 28 U.S.C. § 1446(d) and D. Mont. L.R. 3.3(a), contemporaneously with the filing of this Notice of Removal, BNSF is filing with this Court a copy of its Written Notice of Removal in the State Court Action. *See* BNSF’s Written Notice of Removal attached hereto as **Exhibit “G.”**

5. Documents Filed in State Court.

The following documents have been filed in State Court: Petition for Attorneys’ Fees and Costs; Certificate of Service; Declaration of Jon Mark Moyers in Support of Petitioner’s Attorney’s Fees and Costs; Declaration of Kathryn Kohn Troidahl in Support of Petitioner’s Attorney’s Fees and Costs; Motion for Rule 16 Scheduling Conference; Order Setting Scheduling Conference; and BNSF’s Written Notice of Removal. BNSF has attached hereto as **Exhibits “A,” “B,” “C,” “D,” and “H”** a copy of all process, pleadings, and orders served upon it in this action; pursuant to 28 U.S.C. § 1446(a).

5. Venue is Proper.

Removal to this Court, the Billings Division, is proper because the State Court Action was filed in this Court's district in the County of Yellowstone. See 28 U.S.C. § 1441(a); D. Mont. L.R. 1.2(c)(1). However, BNSF has filed a Petition for Judicial Review of the agency adjudications, Cause No. 6:21-cv-00054-SEH, which forms the basis of Rod's claim for fees and for which this matter should be consolidated.

Based on the foregoing, BNSF removes to this Court the State Court Action.

DATED this 28th day of July, 2021.

HEDGER FRIEND, P.L.L.C.

By: /s/ Michelle T. Friend
Attorney for BNSF Railway Company

CERTIFICATE OF SERVICE

I, the undersigned, a representative of the law firm of Hedger Friend, PLLC, hereby certify that I served a true and complete copy of the foregoing on the following persons by the following means:

1-3 CM/ECF
_____ Hand Delivery
_____ Mail
_____ Overnight Delivery Service
_____ Fax
_____ E-Mail

1. Clerk, U.S. District Court
2. Jon M. Moyers
 Moyers Law P.C.
 3936 Avenue B, Suite D
 Billings, MT 59102
3. Kathryn Kohn Troidahl
 KOHN LAW, P.A.
 P.O. Box 390074
 Minneapolis, MN 55439

DATE: 07/28/2021

/s/ Michelle T. Friend.